No. 3443.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

JULIA WHITE CASTLE,

Plaintiff in Error,

vs.

WILLIAM R. CASTLE, LORRIN A. THURSTON and ALFRED L. CASTLE, Trustees Under the Will of James Bicknell Castle, Deceased,

Defendants in Error.

REPLY BRIEF OF PLAINTIFF IN ERROR.

FRANCIS M. HATCH,
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THE RECORDER COMPANY, 689 STEVENSON ST., S. F.

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Defendants in error, having made the point that the issue involves nothing but the construction of a local statute, and that this Court should therefore dismiss the writ, plaintiff in error asks leave to file this brief in reply.

I. (1) Defendants in error, on page 5 of their brief, say:

> "The plaintiff in error contends that her right to dower is determined by section 2977 of the Revised Laws of the Territory of Hawaii. Nothing is better settled than that in the construction of a local territorial statute the Supreme Court of the United States will follow the local court."

A glance at the cases cited will show that not one of them questions the power of the Supreme Court of the

United States in a proper case to overrule the local court. These cases all recognize this power emphatically by the choice of language used in declining to exercise the power in the particular instance. Without exception when the local court is confirmed it is because a strong enough case has not been made out to induce the Supreme Court to intervene.

For instance, in *Kealoha* v. *Castle,* 210 U. S. 153, the Court says the rule is that *we lean towards* the interpretation of a local statute adopted by the local court. "Weight attaches to the construction given by the local court."

In *Jones* v. *Springer,* 226 U. S. 157, the Court says:

> "On that question, as usual, we follow the ruling of the Supreme Court of the Territory, *unless there are stronger reasons to the contrary* than are shown here."

In *Licks* v. *Smith,* 227 U. S. 379, the language used is "in accordance with a leaning many times declared," etc.

In *Hapai* v. *Brown,* 239 U. S. 502, saving language is used, "Upon a matter like this." (Question as to multifariousness.)

In *Cary* v. *Dye,* 208 U. S. 515, "the views of the local courts are very persuasive of the construction of local statutes."

In *Classon* v. *Matko,* 223 U. S. 646:

> "Even if we should concede that the statute is ambiguous we certainly should lean to agreement with the Supreme Court of the Territory."

In *John Ii Estate* v. *Brown*, 235 U. S. 342, the matter was of *local procedure.*

In *Lewers & Cooke* v. *Atcherly*, 222 U. S. 285, the Court says:

> "Acting on this rule, as to the application of which in practice, we see no sufficient reason for not following," etc.

A distinction must be made between cases coming up from state courts and those arising in a territory. In the latter cases the propriety or desirability of a review by the Federal Court of Appeals is plain.

In purely local questions the general rule undoubtedly would be followed. For example, in the case of Hawaii, questions of water rights are unquestionably local and distinctive because based on immemorial usage.

The case at bar has no local individuality; it is a question of dower, and unless marriage, death and dower are local to Hawaii these questions do not fairly come within the narrow category above named. The general public policy of the nation applies.

It is submitted that the case at bar distinctly involves a nation-wide policy.

(2) The law in question is in force in the Territory of Hawaii solely through force of section 6 of an act entitled An Act to Provide a Government for the Territory of Hawaii, approved April 30, 1900. It is therefore an act of Congress and a local law only in its application.

The passage of this particular provision (as is true of the whole act) took place only after the report of

the Commission appointed by the President of the United States to recommend legislation for the benefit of the Territory of Hawaii.

II. That the ruling is settled law in Hawaii.

Estate of Ena v. *Ena,* 18 Haw. 588, has no visible bearing.

In re Alexandre, 19 Haw. 551, appears to be misunderstood by defendants in error. Counsel say on page 8 of their brief, paragraph (5):

> "In the Alexandre case there was a specific determination by the court that the proceeds of the policy were *assets* of the estate, and the court held that the widow had no dower therein."

Both the language and the meaning of the court are departed from in defendants' quotation. Please mark the word "assets." Where is it found in that decision?

The case at the outset states, quoting from the by-laws of the association,

> "the by-laws providing that 'for all legal purposes the donation * * * is not considered as assets of the estate of the deceased.' "

The "donation" was made with that condition. Hence it was not subject to payments of debts. In the case at bar the policies being payable to executors or administrators of deceased, must be held to have been intended by him to provide a fund for the quick payment of debts.

Again, in the Alexandre case the beneficiary by the by-laws was empowered to assign the benevolence by a will. He did so, excluding his widow. Thus

this case joins the list of many others quoted by defendants in error in which the insured has assigned the policy to others. For instance, on page 15 of their brief, the case of *Gauch* v. *St. Louis M. L. Ins. Co.,* 88 Ill. 251, is set out. The beneficiary being "legal heirs" the decision was the widow was not a legal heir. The case has no more application here than if the policy had carried the names in full of the legal heirs. Practically it had been assigned to others.

III. In section V of their brief (page 9) defendants in error lose the point of plaintiff in error's contention.

It has not been suggested that the words "movable effects in possession" mean anything different now than when they were enacted in 1846.

On the contrary, counsel for the widow (the present plaintiff in error) produced the original text of the enactment and proved from it that defendants in error narrow construction of the quoted words is unsound. Only subsequent amendments, in which the opposed ideas of property fixed and property movable was lost sight of, gave the pretext for such argument as defendants in error have advanced.

The law as originally passed carries on its face the idea of liberality to widows.

IV. In fact, no question of life insurance was before the Probate Court in this case. The executors filed final accounts showing certain money in hand for distribution. It bore no ear-mark. It was subject to no equity. No person intervened claiming rights under the policies of insurance. The Probate Court, in accordance with immemorial practice in Hawaii,

awarded the widow one-third of the sum, as money, not as life insurance. On appeal to the Supreme Court of the Territory of Hawaii various arguments were advanced by counsel for defendants in error to show that the order of distribution was wrong. These arguments were based on three contentions:

(a) That proceeds of life policies were not "property" within the meaning of the statute.

(b) That proceeds of life policies formed no part of the estate.

(c) That the words "movable effects in possession," etc., do not include cash.

Reference was made by plaintiff in error to the surrender value of policies simply to illustrate the fallacy of defendants in error argument.

It is the wide-reaching effect of the claim that the words "movable effects," as used in section 2977, Revised Laws of Hawaii, can not include money in the hands of executors and administrators, which gives force to plaintiff in error's argument that this Court should intervene.

So much more than the rights of this claimant is involved, and the danger that a false rule affecting possibly half the estates of deceased persons in Hawaii for years to come is so great this Court should overcome any reluctance to interfere, and should sweep away the flimsy barrier of "local statute only" raised by defendants in error.

The final and convincing reason (it is submitted) why this Court should intervene is that the Supreme Court of Hawaii has plainly applied a wrong rule of interpretation to the statute in question.

A remedial statute has been construed as is a criminal law when courts strain to save the rights or lives of individuals. This wrong rule of interpretation has been applied to a law affecting property rights of women who may be widows. Complete uniformity in questions of domestic relations can not be had under our system of state governments. Uniformity of interpretation, consistent liberality of construction in matters of law affecting women can easily be obtained in Territories of the United States through the supervising power of the Federal Courts of Appeal.

An outlying territory with a strong sag towards the Orient can be helped back into harmony with the Union at large through a review by this Court. It would seem that the Court would welcome such an opportunity.

Respectfully submitted,

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